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Attorney for Defendant
ROBERT B. SULLIVAN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SCOTTSDALE INSURANCE
COMPANY,

Plaintiff,

VS.

SULLIVAN PROPERTIES, INC.;
ROBERT B. SULLIVAN; MAUI
LAND & PINEAPPLE COMPANY,
INC.; AND KAPALUA LAND
COMPANY, LTD.

Defendants.

CIVIL NO. CV04-00550 HG BMK
(Declaratory Relief)

**DEFENDANT ROBERT B.
SULLIVAN’S MOTION TO
CERTIFY ISSUE TO THE
HAWAII SUPREME COURT;
MEMORANDUM IN SUPPORT
OF MOTION; CERTIFICATE
OF SERVICE**

NO TRIAL DATE SET

**DEFENDANT ROBERT B. SULLIVAN'S MOTION TO
CERTIFY ISSUE TO THE HAWAII SUPREME COURT**

Defendant ROBERT B. SULLIVAN, (hereinafter "Defendant SULLIVAN") by and through his attorneys, RICHARDS & LUKE, and pursuant to Rule 7, Federal Rules of Civil Procedure and Rule 13, Hawaii Rule of Appellate Procedure, hereby moves this Honorable Court to certify the following question to the Hawai'i Supreme Court:

Whether, and if so under what circumstances, an insurer may recover defense costs paid on behalf of an insured where it is later determined by a court of law that the insurer did not have a duty to defend the insured.

DATED: Honolulu, Hawaii, January 4, 2007.

/s/ Michele-Lynn E. Luke
MICHELE-LYNN E. LUKE